EX PARTE OR LATE FILED

RECEIVED
APR 2 1997
Federal Communications Commission
Office of Secretary

Reply comments made by International Digital Communications Inc. (IDC) in the matter of Benchmarks NPRM IB Docket No. 96-261.

As stated in our initial response to the FCC, IDC remains opposed to the attempt by the FCC to impose benchmarks for international settlement rates. Although we generally agree that reform of the current system is desirable, we feel that this effort must be carried out in the appropriate international forum with multilateral agreement.

Upon review of the materials submitted to the FCC in response to the NPRM, there are several common issues we would like to highlight by way of reply.

FCC Authority

The majority of respondents agree that the FCC does not have authority to impose benchmarks for accounting rates negotiated between the US and correspondent carriers. Inherent weaknesses of this long established principle should be addressed by a nonpartisan international organization such as the WTO or the ITU. The unilateral action proposed by the FCC is an abuse of the market position of the US telecommunications industry. Proposed reforms in the US will not affect the rates between other countries and will exacerbate the distortion of outpayments and accounting rates.

Subsidization

IDC is in agreement with many respondents in the position that the outpayments imbalance in the US market is the result of reverse charge services such as home country direct and callback, as well as hubbing and refile. These non-traditional services generate substantial revenue which clearly benefit the US businesses that are promoting them. For this reason, the "subsidization of foreign monopolies by US consumers" is offset by the revenue received, making the subsidization argument unsound.

In addition to this, the savings from reduced accounting rates between the US and Japan, have not been transferred to US consumers as implied should happen in the NPRM, but in fact have gone directly to increase profits of US carriers.

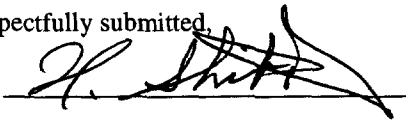
Another comment with which we agree concerns the real subsidization of internet connectivity in the US by non-US carriers and PTT's. Because of the predominance of the US in the early development

No. of Copies rec'd 0+9
List ABCDE

of the internet, foreign carriers have been forced to pay the end to end cost of internet connections. IDC is in agreement with other carriers that this inequity should be included in any consideration of accounting rate reform.

In summary, IDC wishes to reconfirm our opposition to the FCC's NPRM. We are hopeful that the overwhelming negative response by the world's telecommunications companies and administrations will convince the FCC that this action is inadequate as a solution to accounting rate reform.

Respectfully submitted,

By: 

Hiroshi Shibata

Director - International Services

International Digital Communications Inc.

5-20-8, Asakusabashi, Taito-ku, Tokyo 111-61, Japan

April 1, 1997

THE REAL ESTATE INDUSTRY OPPOSES ANY ATTEMPT TO MANDATE INSTALLATION OF RECEIVING ANTENNAS

The owners and managers of multi-tenant residential and commercial properties[1] have demonstrated in their comments that the Commission should not overturn lease provisions governing the placement of over-the-air receiving devices on multi-unit properties.

- The principle laid down in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), governs any rule establishing a right or a duty to install receiving facilities, because any such installation constitutes a physical occupation and is thus a per se taking. The "power to exclude [is] one of the most treasured strands in an owner's bundle of property rights." *Loretto* at 435-36.

- Granting a tenant the right to install antennas constitutes a per se taking because it prevents the owner from excluding antennas and wiring from the premises and using that part of the property for other uses, and expands the scope of the conveyance bargained for in the lease. *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987), and *Yee v. City of Escondido*, 503 U.S. 519 (1992), do not apply because they involve no such expansion or transfer. *Florida Power* says that if a utility chooses to lease its property, the FCC may, pursuant to explicit statutory authority, regulate the rates charged by the utility. It does not say that once a landowner enters into a lease the government may enlarge the property conveyed to the tenant without effecting a taking. Likewise, *Yee* is a rent control case -- the government action did not force a physical invasion of the property. Furthermore, the Supreme Court has recognized that there is a point at which regulation of property rights becomes a taking. *Block v. Hirsh*, 256 U.S. 135 (1921).

- The statutory language does not authorize the Commission to expand the conveyance made to a tenant. When Congress does grant the right to use property it does so very explicitly. For example, when the 1996 Act amended Section 224 to require utilities to allow telecommunications providers nondiscriminatory access to their rights-

[1] Represented in Docket Nos. 95-59 and 96-83 by the Building Owners and Managers Association International ("BOMA"), the Institute of Real Estate Management ("IREM"), the International Council of Shopping Centers ("ICSC"), the National Apartment Association ("NAA"), the National Multi Housing Council ("NHMC"), the National Realty Committee ("NRC"), and the National Association of Real Estate Investment Trusts ("NAREIT").

of-way, it did so plainly and in considerable detail. No similar language appears in Section 207.

- Nor may the FCC order building owners to install facilities to serve tenants, for three reasons.

  -- First, the mere presence of an antenna on the property without the landlord's consent constitutes a physical invasion because the owner has been denied the use and enjoyment of the space occupied by the facilities. Such a rule would not be analogous to such generally applicable regulations as fire codes. Safety codes are intended to protect the public in general; they do not grant special rights to a limited class at the expense of another limited class. The Supreme Court has justified such regulations on the grounds of "public exigency," *Block v. Hirsh*, 256 U.S. 135 (1921); the right to install an antenna does not address a "public exigency." In addition, such regulations have been enacted by state and local governments under their police powers; the federal government has no police power.

  -- Second, the FCC has no authority over building owners. *Illinois Citizens Committee for Broadcasting, et al. v. Sears, Reobuck & Co.*, 35 FCC 2d 237, *aff'd*, 467 F.2d 1397 (7th Cir. 1972). Therefore, the FCC cannot order building owners to provide video services or facilities to their tenants. Section 207 is not a grant of authority over building owners. It is merely a directive to exercise authority under Section 303, and Section 303(v) grants authority only over DBS services -- not building owners.

  -- Third, such a rule would be directly contrary to the intent of Congress. The legislative history refers to governmental and quasi-governmental restrictions that limit an owner's rights. Preempting zoning rules actually restores the owner's property rights -- but ordering owners to install facilities does just the opposite.